IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

W.P.NO.11389 of 2003
to
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K.R. Kumar, .. Petitioner in WP.11389/03

A. Alagarsamy .. Petitioner in WP.11390/03
K. Krishnamurthy .. Petitioner in WP.11391/03
V. Ramaraj .. Petitioner in WP.11392/03
J.A.E. Padmavathi .. Petitioner in WP.11393/03

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Education Department,
Fort St. George,
Chennai 9.

2. The Director of School Education
(Higher Secondary Education)
College Road, Chennai 6.

3. The District Educational Officer,
Trichirappalli District. ..Respondents 1 & 2 in all WPs

4. The Correspondent,
The Higher Secondary School for Boys,
Trichirappalli 6. .. Respondents 3 & 4 in all WPs except WP.11389/03

5. The District Educational Officer,
Ramanathapuram District. ..3rd Respondent in WP.11390/03

4. The Correspondent,
A.V. Higher Secondary School,
Paramakudi 623 707.
Ramanathapuram District. .. Respondents 3 & 4 in
WP.No.11390/03

6. The Correspondent,
Zamindar s Higher Secondary School,
Kattuputhur,
Trichirappalli 637 015. .. 4th Respondent in WP.No.
11391 of 2003
7. The Correspondent,
S.V.V Higher Secondary School,
Varichettipalayam (P.O)
Thuraiyur Taluk,
Trichirappalli 621 012. .. 4th Respondent in WP.No. 11392
of 2003
8. The Correspondent,
Methodist Girls Higher Secondary School,
Woriur,
Trichirappalli 6. .. 4th Respondent in WP.No.
11393 of 2003

For Petitioners: Mrs.Nalini Chidambaram
Senior Counsel for
Mr.S. Silambanan
Mr.R. Saravanakumar
Mr.C. Selvaraju

For Respondents : Mr.V.R. Rajasekaran
Special Govt. Pleader (Edn)

:COMMON ORDER

(The order of the court was made by P.K. MISRA, J)

Heard the learned counsels appearing for the parties. In this batch of writ petitions, common questions of law and facts arise for decision. The matters were heard together and shall be governed by the common judgment.

2. To appreciate the contentions raised, it is necessary to notice certain background facts in their historical perspective.

3. The State Government under G.O.Ms.No.1719 dated 14.9.1978 issued orders regarding running of vocational courses relating to Agriculture, Home science, Commerce & Science, Engineering & Technology, Health and miscellaneous course at Higher Secondary stage. The Government also decided that part time instructors may be employed for handling vocational courses by fixing remuneration of Rs.150/- per month.
Subsequently, on the basis of the recommendation of the Director of School Education, the Government in G.O.Ms.No.105 dated 21.1.1980 took a decision that if the workload warrants, a second part time instructor may be appointed separately on a remuneration of Rs.150/- per month and that if the situation warrants, the same part time instructor may be allowed to handle more than 20 periods on remuneration of Rs.300/- per month, but such a course should be adopted only in case of non-availability of additional instructors on the particular subject. Such part time instructors who were required to take 20 or more periods on part time, in course of time were known as double part time vocational instructors and the others were known as single part time vocational instructors.

4. Considering the representations made by such double part time vocational instructors, the Government in G.O.Ms.No.712 dated 28.5.1990 decided to regularise the services of such double part time vocational instructors over a period of two years from 1990-91 onwards and accordingly initial sanction was accorded for creation of 800 posts of vocational instructors in the Higher Secondary Schools in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 to teach vocational education on various subjects with effect from 1.4.1990 so as to absorb the fully qualified double part time vocational instructors. The Government also directed that remuneration of remaining double part time vocational instructors would be raised from Rs.800/- to Rs.900/- per month with effect from 1.4.1990.

Undisputedly on the basis of such order, 800 double part time vocational instructors were regularised and fitted against the scale of pay.

5. It appears that O.A.No.3646 of 1991 was filed by six single part time instructors contending that the Government had discriminated against such single part time instructors by not providing for their regularisation and by providing regularisation for double part time teachers. One Mr.R. Krishna Kumar, who was a single part time instructor, filed O.A.No.3280 of 1992 questioning the policy of the Government in not regularising single part time vocational instructors and treating them differently from the double part time vocational instructors.

6. Thereafter, the Government issued G.O.Ms.No.967 dated 16.10.1992 to regularise the balance double part time vocational instructors who were fully qualified and also made certain provisions regarding the unqualified double part time vocational instructors and also the qualified and unqualified single part time instructors. The relevant portion of the Government Order is to the following effect:-

" 4. Government examined the matter carefully based on the recommendations of the Director of School Education they have decided :

a) to bring 587 fully qualified double part time teachers into regular scale of pay;

b) unqualified 450 double part time teachers may be trained and absorbed in the regular scales of pay;

c) to bring all qualified single part time teachers into existing/ sanctioned secondary grade posts and

d) other unqualified single part time teachers may be given training and absorbed as secondary grade teachers in future."

7. Accordingly the Government sanctioned creation of 587 posts of vocational instructors and in course of time 587 double part time teachers were regularised and such part time posts were abolished. The Government also directed the Director of School Education to conduct suitable training programmes for the unqualified double part time and single part time vocational instructors.

8. After the aforesaid G.O.Ms.No.967 was issued directing regularisation of qualified double part time vocational instructors and also directing regularisation of non-qualified double part time instructors after undergoing training, the Tamil Nadu Higher Secondary School Degree and Diploma Vocational Teachers Peravai, represented through their General Secretary, filed O.A.No.1999 of 1993 contending that single part time vocational instructors had been discriminated against double part time vocational instructors.

9. It seems O.A.No.3280 of 1992 was first taken up for hearing and was disposed of by judgment dated 18.6.1993. The relevant portion of the decision is as follows :-

" . . . In such circumstances, the proper course would be to appoint in the time scale posts persons with reference to their seniority based on the date of appointment as part time instructors irrespective of

whether they are working as double part time or single part time. When a person on the time scale is appointed, there will be no room for any part time instructor in that institution. The respondents 2 and 3 are directed to take action accordingly to modify the existing scheme for appointment and allocation of posts of instructors on time scale of pay, to ensure that such appointment is made strictly with reference to seniority and not the accident of a person having been allowed to work against two posts of single part time instructors. When the Government considers any representation they should examine all the applications and merely act on the facts presented before them by the category or class or persons making the representations. The Government should show awareness of the fact that categories similarly placed will come forward with claims, even if they had not done so in the first instance and the Government decisions must be such that it should be applicable to all similarly placed persons based on proper norms and any inter se priorities should also be based on proper norms.
Pending such re-examination and formulation of a policy to give due regard to seniority without reference to the fortuitous circumstances of a person being asked to work in two posts as double part time instructor, action with reference to the orders issued in G.O.Ms.No.712 , Education Department, dated 28.5.1990 should be suspended. Any other sanction for regularisation of vocational teachers issued thereafter should also not be operated till a decision is taken with reference to our directions in this order.

Similar order was passed in respect of G.O.Ms.No.967 dated 16.10.199 2 by a subsequent order of the Tribunal dated 17.12.1993.

10. Subsequently, O.A.No.3646 of 1991 and O.A.No.1999 of 1993 were taken up together and disposed of by a common decision dated 17.12.19 93. In the said decision, after quoting the relevant portion of the decision in O.A.NO.3280 of 1992, it was observed :
 . . . These directions with reference to an earlier G.O. will be equally applicable to G.O.967 dt.16.10.92 relating to unqualified double part-time teachers also. There is no basis for giving priority to double part-time teachers over single part-time teachers without reference to seniority based on date of appointment and total service, because the appointment as double part-time teachers was a matter of accident and not on the decision based on seniority or selection. In any case unqualified teachers cannot in any case have precedence over qualified teachers even if working single part time. Accordingly the orders in paragraph 4 of the G.O.Ms.No.967, Education (HS3) Department dated 16.10.92 are set aside.

11. Considering the aforesaid direction of the Tribunal, the Government under G.O.(RT) No.273 dated 7.4.1994 passed an order to the effect that the vocational instructors, who were brought under regular scale in G.O.Ms.No.712 dated 28.5.1990 and G.O.Ms.No.967 dated 16.10.19 92, are to be considered as part time instructors and they are to be paid lumpsum remuneration from the date of issue of the orders passed in the respective O.As. i.e., 18.6.1993 and 17.12.1993. Such order of the Government was challenged by the instructors who had been already regularised and order of stay was granted.

12. Subsequently, GO.Ms.No.834 dated 23.9.1994 was issued by the Government. The relevant portion of the said Government Order is to the following effect :-

" . . . (i) 1387 posts of vocational instructors on regular time scale of pay of Rs.1400-40-1600-2300-60-2600 be created with effect from the date of issue of these orders for the period upto 30.6.1995,
(ii) The above 1387 posts of vocational instructors referred to in para (i) above shall be filled up by the fully qualified part time teachers according to their "seniority" irrespective of whether they are working as "double or single" part time Instructors. Specific orders appointing them in the above posts shall be issued:
(iii) Those fully qualified double part time instructors who were earlier brought into regular scale of pay by virtue of the Government orders second and third read above, but who may not become eligible for being brought into regular time scale, in view of the revised orders in item (ii) above, shall be given protection of pay, from the date on which their junior got pay in the regular time scale of pay with reference to para 4(ii) of this Government Order;
(iv) The fully qualified single part time instructors who happen to be seniors to the junior most fully qualified double part time instructors referred to in item (iii) above shall also be brought under regular scale of pay with reference to the date of drawal of pay in regular time scale by their junior;
(v) The remaining fully qualified single part time instructors and subsequently qualified (i.e) on or before 16.10.92 double part time instructors be absorbed in existing vacant posts in the secondary grade scale of pay for the time being and appointed as vocational instructors in the B.T. scale of pay as and when posts become available under the centrally sponsored scheme of vocational Education;
(vi) The 1059 unqualified single and double part time vocational instructors shall be given appropriate training by the District Institutes of Education and Training and on completion of training appointed in secondary grade posts in the secondary Grade scale of pay, the Director of School Education shall evolve a suitable training programme in consultation with the Director of Teacher Education, Research and Training. Till such time, the unqualified double/single part time vocational instructors shall be paid a consolidated pay at an enhanced rate of Rs.1000/- Rs.500/- p.m. respectively. During the period of training instructors will continue to draw the above remuneration.
(vii) As a result of the orders in para (iii) and (iv) above, government sanction the creation of 603 (Six hundred and three) additional posts of vocational instructors for a period upto 30.6.1995 in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 with the usual allowances, from the date on which the qualified part time instructors become eligible for being brought into the time scale of pay; and . . . ."
. . . .
5. The Government further direct that all the earlier appointments of the 1387 double part time vocational teachers into regular time scale of pay with reference to the Government order second and third read above be treated as irregular appointments and hence, the earlier appointments into regular

time scale of pay be cancelled and they be reverted to posts carrying consolidated pay from the date on which they had been appointed into regular time scale of pay, and continued as double part time vocational teachers. Government waive the recovery of excess emoluments drawn in the time scale of pay over and above the amount that would be admissible on consolidated pay, the appointment of vocational instructors to be made with reference to para 4(ii) to para 4(iv) of these orders alone shall be reckoned for all purpose including regularisation of services. Their earlier appointments on regular time scale of pay are null and void.

13. Cases were filed before the State Administrative Tribunal by double part time instructors who had been regularised in Government Higher Secondary Schools pursuant to G.O.Ms.No.712 and G.O.Ms.No.967. Similarly cases were filed in the High Court against such order by double part time instructors who had been regularised in aided schools. During pendency of such petitions in the High Court and the Tribunal, interim orders had been passed protecting the pay scale and also staying recovery of any difference amount. Subsequently, a Division Bench of the High Court disposed of the writ petitions by observing:

 . . . (1) it is open to the petitioners to get themselves impleaded in the proceedings pending before the TAT in relation to the aforesaid Government orders referred to in the course of this order.
(2) During the pendency of the proceedings before the TAT, the benefit of pay scale which these teachers have been enjoying till now and stay of the recovery of arrears as directed in G.O.Ms.No.834 dated 23 .9.1994, shall continue.
(3) All other contentions of the petitions are left open.
9. Accordingly, the writ petitions are disposed of in the aforesaid terms. The WMPs, are also disposed of. It is made clear that if it becomes necessary, it is open to the petitioners to approach this court after the TAT disposes of the matters finally and the State Government issues the orders pursuant thereto, if they feel aggrieved.

14. Thereafter the Tribunal by judgment dated 29.11.2002 dismissed the batch of O.As, giving rise to the present writ petitions.

15. The contention before the Tribunal was to the effect that G.O.(R.T).No.273 dated 7.4.1994 and G.O.Ms.834 dated 23.9.1994 were inconsistent with the policy decision taken and at any rate the double part time teachers numbering 1387 had already been regularised and under the impugned G.Os such vested right was taken away. A contention had also been raised that the above Government Orders were discriminatory as compared to P.G.Assistants. The Tribunal came to the conclusion that G.O.Ms.No.712 dated 28.5.1990 and G.O.Ms.No.967 dated 16.10.199 2 were set aside by the Tribunal in the applications filed by the single part time teachers and thereafter the Government had decided to regularise all, whether single part time or double part time on the basis of their seniority. The Tribunal also observed :-

 . . . It is not proper to permanently take away the regularisation and other benefits given to Double part time teachers and this is only passing measures and Government has subsequently passed orders

regularising vocational teachers and posts have been sanctioned and teachers have been fixed into it taking into consideration their seniority. Therefore, it cannot be stated that the impugned G.O. has taken away the benefits permanently. This has been brought only to enable the Government to formulate the policy and execute the same in respect of vocational teachers.

It was further observed :
 . . . Therefore, there is no illegality about the impugned G.O. and G.O. itself has been passed only in view of the orders passed by this Tribunal in earlier applications. The order passed by this Tribunal in earlier O.As. has become final and just because the individual teachers viz.1837 (1387) teachers who have been earlier regularised were not parties to the O.As., the effect of the order cannot be revised or they cannot just avoid by saying that they are not parties to that. The Government which passed G.O. as a result of which only regularisation has been earlier granted was a party to O.As. and it is binding upon them and therefore, it is also binding upon all those teachers who were benefited by the earlier G.Os. Moreover, the Tribunal has not found fault as with the policy of regularisation and fixing pay for part time teachers in regular time scale of pay but the only emphasised the need for giving the benefits to all the part time teachers irrespective of whether they are Single Part time Teachers or Double Part time teachers.

It was further observed :
 13. The orders passed by this Tribunal in the previous O.As is only to the effect that the benefits of regularisation and time scale of pay and other service benefits shall be given to part time vocational teachers and their seniority must be maintained equally. The Single part time teachers are entitled to have their inter-se-seniority fixed with reference to Double part time teachers and both units cannot be separately dealt with and separate seniority shall not be maintained.

16. The main contention of the counsels appearing for the petitioners is to the effect that there was no direction in O.A.No.3280 of 199 2 to quash G.O.Ms.No.712 dated 28.5.1990 and G.O.Ms.No.967 dated 16.1 0.1992 and the direction was to treat the instructors, whether single part time or double part time, alike on the basis of their seniority. The main contention of the single part time vocational instructors at that stage was that they should have been also regularised and they should not be treated differently from double part time vocational instructors. In other words, their specific grievance is that they should be treat on par with double part time vocational

instructors and the benefits extended to double part time vocational instructors should also be extended to them. In the above context only the specific direction of the Tribunal in the said case has to be construed.

17. It is of course true that while dealing with O.A.Nos.3646 of 19 91 and 1999 of 1993, the Tribunal had observed
 In any case unqualified teachers cannot in any case have precedence over qualified teachers even if working single part time. Accordingly the orders in paragraph 4 of the G.O.Ms.No.967, Education (HS3) Department dated

16.10.92 are set aside.

However, such observation has to be considered in the light of challenge made in those cases and the observations earlier made by the Tribunal in the very same judgment. As already pointed out the Tribunal in the subsequent decision in O.A.Nos.3646 of 1991 & 1999 of 1993 had merely extracted the relevant portion of the decision of the Tribunal in O.A.No.3280 of 1992 dated 18.6.1993. In O.A.No.3280 of 1992, no observation whatsoever had been made for quashing either G.O.Ms.No.7 12 dated 28.5.1990 or G.O.Ms.No.967 dated 16.10.1992 and the said decision was also totally silent about the subsequent G.O.Ms.No.967 dated 16.10.1992.

18. The main grievance in all the O.As was that there was no rational in discriminating the single part time teachers compared to double part time teachers and it was only highlighted in O.A.No.1999 of 199 3 that even unqualified double part-time teachers had been given preference vis-a-vis qualified single part time teachers, which was arbitrary and discriminatory. In none of the O.As, there was a prayer to quash either G.O.Ms.No.712 dated 28.5.1990 or G.O.Ms.No.967 dated 16.10.1992. On the other hand the main contention was to the effect that single part time instructors, whether qualified or un-qualified, should not have been ignored from the purview of regularisation and they should have been treated alike with the double part time instructors.

19. The Government under the pretext of giving effect to the order of the Tribunal in those cases have purported to take away the rights already conferred on the petitioners and other vocational instructors who had been regularised. Apart from the fact that the Tribunal had not specifically set aside the G.O.Ms.No.712, the fact that the beneficiaries under G.O.Ms.No.712 had already been regularised were not before the Tribunal and the right which was already vested in them could not have been taken away by such decision. As a matter of fact, in our opinion, the Tribunal had never indicated to take away such vested right. On the other hand it only emphasised that single part time teachers should be treated on the same footing. It is evident that the order of the Tribunal has been misinterpreted by the Government resulting in taking away the vested right of the petitioners.

20. It is not disputed that by virtue of the said orders passed by the High Court in several cases, the vocational teachers continue to enjoy the benefits of their regularisation as per G.O.Ms.No.712 and G.O.Ms.No.967.
Subsequently, the single part time teachers have been regularised. In the guise of giving effect to the orders of the Tribunal, the respondents have deprived the petitioners of their vested right even though such petitioners were not parties before the Tribunal and had not been heard either by the Tribunal or by the Government. As a matter of fact, the present impugned order has the effect of terminating the services of the persons who had already been regularised and of course reappointing them on a subsequent date.

21. The basic concept highlighted in the orders of the Tribunal to the effect that single part time teachers and double part time teachers should be treated equally cannot be faulted. However, since double part time teachers had already been regularised and conferred a benefit, in the absence of a specific direction by the Tribunal, such benefit should not

have been taken away by the Government. On the other hand, the Government should have made endeavour to confer similar benefits on the single part time teachers.

22. Having regard to the facts and circumstances of the case, we feel interest of justice would be served by issuing the following directions :-

(1) The impugned G.O.Ms.No.834 Education Science and Technology (HS.II) Department dated 23.9.1994 is quashed to the extent and so far as it takes away the vested right of regularisation already conferred on the Double Part-time Instructors as per G.O.Ms.Nos.712 of 1990 and 967 of 1992.

(2) Such Double Part-time Instructors, who were regularised pursuant to the aforesaid G.O.Ms.Nos.712 of 1990 and 967 of 1992, shall continue to enjoy the status they had acquired, including the regular increments as per their original date of regularisation.

(3) Single Part-time Instructors, who were otherwise qualified, shall be deemed to have been regularised with effect from the date on which any Double Part-time Instructors junior to them had been regularised and their seniority and length of service would be treated as such from the deemed date of regularisation for all purposes.

(4) All such double part time instructors and single part time instructors, who are deemed to have been regularised, as per the directions contained in paragraphs 2 and 3 shall be entitled to the benefit of notional increment in the regular scale of pay applicable to them from the deemed date of their regularisation. However, no amount shall be paid towards such notional increment.

(5) No recovery shall be made from any of the double part time teachers or single part time teachers. While realigning the seniority of the single part time teachers vis-a-vis double part time teachers, there shall not be any reduction in scale of pay already drawn by the double part time teachers and no recovery shall be made.

23. With the above directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed. No costs.

Index : Yes
Internet: Yes

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